

MONTANA LEGISLATIVE HISTORY

BEST COPY
AVAILABLEChapter 112 1985Bill H 251 S _____Original bill & history ☒ CH. Committee on Bus. Labor

Hearing Date(s) _____ C

1/25 ☒ C

_____ C

_____ C

Date Out

1/25 ☒ CS. Committee on Labor Emp. Rel.

Hearing Date(s) _____ C

3/5 ☒ C

_____ C

_____ C

3/5 ☒ CDid this bill originate in an interim committee? _____ Yes ☒ No

Committee _____

Report _____

HOUSE FINAL STATUS

PAY-FOR-PERFORMANCE BONUS PROGRAM FOR STATE EMPLOYEES

1/18	INTRODUCED	
1/18	REFERRED TO STATE ADMINISTRATION	
1/29	HEARING	
1/29	COMMITTEE REPORT-NO RECOMMENDATION	
1/29	STATEMENT OF INTENT ATTACHED	
2/01	2ND READING DO NOT PASS	64 34
2/01	BILL KILLED	

HB 250 INTRODUCED BY RAMIREZ, CRIPPEN, ET AL.
METHOD FOR FIXING TAX RATE APPLICABLE TO CERTAIN
CLASS ELEVEN PROPERTIES

1/18	INTRODUCED
1/18	REFERRED TO TAXATION
1/21	FISCAL NOTE REQUESTED
1/26	FISCAL NOTE RECEIVED
2/01	HEARING
	DIED IN COMMITTEE

HB 251 INTRODUCED BY RAMIREZ, CAMPBELL
PROVIDE 2 YEAR DISCOVERY STATUTE OF LIMITATIONS FOR
INDUSTRIAL DISEASE CLAIMS

1/18	INTRODUCED	
1/18	REFERRED TO BUSINESS & LABOR	
1/21	FISCAL NOTE REQUESTED	
1/25	HEARING	
1/25	FISCAL NOTE RECEIVED	
1/26	COMMITTEE REPORT-BILL PASS AS AMENDED	
1/31	2ND READING PASS	98 1
2/01	3RD READING PASS	98 1

	TRANSMITTED TO SENATE	
2/06	REFERRED TO LABOR & EMPLOYMENT RELATIONS	
3/05	HEARING	
3/06	COMMITTEE REPORT-BILL CONCURRED	
3/07	2ND READING CONCURRED	48 0
3/09	3RD READING CONCURRED	46 2

	RETURNED TO HOUSE	
3/15	SIGNED BY SPEAKER	
3/15	SIGNED BY PRESIDENT	
3/18	TRANSMITTED TO GOVERNOR	
3/19	SIGNED BY GOVERNOR	
	CHAPTER NUMBER 112 EFFECTIVE DATE: 10/01/85	

HB 252 INTRODUCED BY WALDRON
APPROPRIATION FOR CHILDREN'S TRUST FUND PROGRAM

1/18	INTRODUCED
1/18	REFERRED TO APPROPRIATIONS
2/13	HEARING
	DIED IN COMMITTEE

HB 253 INTRODUCED BY SANDS, SALES
INCREASING INTEREST ON DELINQUENT PROPERTY TAXES

1 HOUSE BILL NO. 251
 2 INTRODUCED BY Ramirez, Campbell
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING
 5 TO CLAIMS ARISING FROM OCCUPATIONAL DISEASE; PROVIDING THAT
 6 THE STATUTE OF LIMITATIONS FOR TOTAL DISABILITY CLAIMS
 7 ARISING FROM AN OCCUPATIONAL DISEASE WILL RUN FROM THE TIME
 8 OF DISCOVERY THAT THE DISABILITY CONDITION RESULTED FROM AN
 9 OCCUPATIONAL DISEASE; REMOVING RESTRICTIONS ON FILING OF
 10 CLAIMS FOR SILICOSIS BENEFITS; AMENDING SECTIONS 39-72-303,
 11 39-72-403, 39-72-405, 39-72-711, AND 39-73-104, MCA;
 12 REPEALING SECTIONS 39-72-406 AND 39-72-407, MCA; AND
 13 PROVIDING AN APPLICABILITY DATE."

14
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 Section 1. Section 39-72-303, MCA, is amended to read:
 17 "39-72-303. Which employer liable. (1) Where
 18 compensation is payable for an occupational disease, the
 19 only employer liable shall be the employer in whose
 20 employment the employee was last injuriously exposed to the
 21 hazard of such disease; ~~but in the case of silicosis, the~~
 22 ~~only employer liable shall be the employer in whose~~
 23 ~~employment the employee was last exposed to harmful~~
 24 ~~quantities of silicon dioxide (SiO₂) dust for a period of 90~~
 25 ~~actual workshifts or more after July 1, 1958.~~

1 (2) In the case of pneumoconiosis, any coal mine
 2 operator who has acquired a mine in the state or
 3 substantially all of the assets thereof from a person who
 4 was an operator of such mine on or after December 30, 1969,
 5 is liable for and must secure the payment of all benefits
 6 which would have been payable by that person with respect to
 7 miners previously employed in such mine if acquisition had
 8 not occurred and that person had continued to operate such
 9 mine, and the prior operator of such mine shall not be
 10 relieved of any liability under this section."

11 Section 2. Section 39-72-403, MCA, is amended to read:
 12 "39-72-403. Time when claims must be presented. (1)
 13 When a claimant seeks benefits under this chapter, his
 14 claims for benefits must be presented in writing to the
 15 employer, the employer's insurer, or the division within 1
 16 year 2 years from the date the claimant knew or should have
 17 known that his total disability condition resulted from an
 18 occupational disease. When a beneficiary seeks benefits
 19 under this chapter, his claims for death benefits must be
 20 presented in writing to the employer, the employer's
 21 insurer, or the division within 1 year from the date the
 22 beneficiaries knew or should have known that the decedent's
 23 death was related to an occupational disease.
 24 (2) ~~The division may, upon a reasonable showing by the~~
 25 ~~claimant or a decedent's beneficiaries that the claimant or~~

the beneficiaries could not have known that the claimant's condition or the employee's death was related to an occupational disease, waive the claim time requirement up to an additional 2 years.

{3}--Notwithstanding the provisions of subsections {1} and {2} of this section, no claim to recover benefits under this chapter may be maintained unless the claim is properly filed within 3 years after the last day upon which the claimant or the deceased employee actually worked for the employer against whom compensation is claimed."

Section 3. Section 39-72-405, MCA, is amended to read:

"39-72-405. General limitations on payment of compensation to disabled employee---exceptions. {1}--Except as provided for in this section, compensation Compensation may not be paid when the last day of the injurious exposure of the employee to the hazard of the occupational disease has occurred prior to July 1, 1959.

{2}--Except as provided for in subsection {3} of this section, no compensation may be paid for silicosis unless during the 8 years immediately preceding the disablement the injured employee has been exposed to harmful quantities of silicon dioxide dust for a total period of not less than 1,000 workshifts in employment in this state and unless total disability results within 3 years from the last day upon which the employee actually worked for the employer

against whom compensation is claimed.

{3}--A silicotic employee who is discharged by his employer to escape liability for silicosis benefits under this chapter is eligible to receive compensation under this chapter when totally disabled if he has 700 actual workshifts since January 1, 1954, for that employer. When any employee in employment on or after January 1, 1959, because he has an occupational disease incurred in and caused by such employment which is not yet disabling, is discharged or transferred from the employment in which he is engaged or when he ceases his employment and it is in fact, as determined by the medical panel, inadvisable for him on account of a nondisabling occupational disease to continue in employment and he suffers wage loss by reason of the discharge, transfer or cessation, the division may allow compensation on account thereof as it considers just, not exceeding \$10,000."

Section 4. Section 39-72-711, MCA, is amended to read:

"39-72-711. Lump-sum and compromise settlements. (1) No final and binding award made upon any claim pursuant to this chapter may be converted into a lump-sum payment, in whole or in part, except as provided in this section or 39-72-712.

(2) Whenever there are contested issues as to an insurer's liability for a claim under this chapter,

1 including--a--claim-based-on-39-72-405(3), a claimant and an
 2 insurer may enter into a full and final compromise
 3 settlement of the claim. However, no such settlements are
 4 binding on the parties until approved by the division. After
 5 the division approves a full and final compromise
 6 settlement, the claim is closed and the insurer's liability
 7 for a settled claim is forever released."

8 Section 5. Section 39-73-104, MCA, is amended to read:

9 "39-73-104. Eligibility requirements for benefits.

10 Payment shall be made under this chapter to any person who:

11 (1) has silicosis, as defined in 39-73-101, which
 12 results in his total disability so as to render it
 13 impossible for him to follow continuously any substantially
 14 gainful occupation;

15 (2)--has-resided-in-and-been-an-inhabitant-of-the-state
 16 of--Montana--for--10-years-or-more-immediately-preceding-the
 17 date-of-the-application;

18 (3)(2) is not receiving, with respect to any month for
 19 which he would receive a payment under this chapter,
 20 compensation under The Occupational Disease Act of Montana,
 21 as provided by chapter 72 of this title, which will equal
 22 the sum of \$200."

23 NEW SECTION. Section 6. Repealer. Sections 39-72-406
 24 and 39-72-407, MCA, are repealed.

25 NEW SECTION. Section 7. Applicability. This act

1 applies to claims arising from exposures occurring on or
 2 after the effective date of this act.

-End-

FISCAL NOTE

Form BD-15

In compliance with a written request received January 21 19 85, there is hereby submitted a Fiscal Note for H.B. 251 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 251 revises laws relating to claims arising from occupational disease.

ASSUMPTIONS:

This legislation affects all occupational disease cases, including silicosis:

SILICOSIS

- a. Current Silicosis Program continues for those exposed prior to proposed legislation.
- b. Very few, if any, new silicosis claims will be received since there is currently no underground mining in Montana and it is unlikely there will be any in the future.

ALL OCCUPATIONAL DISEASE CASES

- a. Proposed legislation impacts claims arising from exposures occurring on or after the effective date of this act.
- b. Future premium rates in high occupational disease exposure industries will likely be affected due to unlimited time period between last employment and identification of disease.

FISCAL IMPACT:

While there may be a fiscal impact in a future biennium, it is impossible to estimate. However, any additional silicosis benefits would increase general fund expenditures, and any additional occupational disease payments would increase expenditures from state special revenues.

David L. Hunter

BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Jan 25, 1985
HB 251

In closing, Representative Bergene told the committee that it is their choice should a pharmacist's license be revoked for violation of the Federal Drug Abuse and Control Act.

There being no further discussion by proponents or opponents all were excused by the chairman and the hearing on House Bill 280 was closed.

ACTION ON HOUSE BILL NO. 280: Representative Brandewie made a motion that House Bill 280 DO PASS. Representative Glaser moved an amendment that would call for an immediate effective date upon passage and approval. The amendment and Representative Brandewie's motion both received unanimous votes. House Bill 280 DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 285: Representative Thomas made a motion that House Bill 285 DO PASS. Second was received and House Bill 285 DO PASS unanimously.

Representative Jan Brown, chairman of the subcommittee for House Bill 162, reported to the committee the information which is attached hereto as Exhibit 4.

ACTION ON HOUSE BILL NO. 201: Representative Driscoll made a motion that House Bill 201 DO NOT PASS. A substitute motion was made by Representative Kitselman that House Bill 201 BE TABLED. Representative Ellerd expressed his concern that a monopoly may be created by passing House Bill 201. Representative Brandewie suggested that something needs to be done, that the quota system is not working. Representative Simon explained that \$135,000 is being spent for liquor licenses, that there is a problem and this problem will continue to exist. The system is built to fail and something needs to be done, stressed Representative Simon. He did support the motion that House Bill 201 BE TABLED. Question being called for, House Bill 201 WAS TABLED, with 14 yes votes, 4 no votes, and 1 abstaining.

HOUSE BILL NO. 251: Hearing commenced on House Bill 251. Representative Jack Ramirez, District #87, sponsor of the bill, stated that this bill would amend the Occupational Disease Act. It provides that the statute of limitations for total disability claims arising from an occupational disease runs from the time of discovery. The bill also removed restrictions on filing of claims for silicosis benefits. The intent of House Bill 251 is to liberalize the period of time in which a person can file a claim for occupational disease benefits. The present law provides for a three year period of time from when a person stops working to file a claim. House Bill 251 calls for two years from the date the claimant knew or should have known an occupational disease exists.

Proponent Glen Drake, an attorney representing the American Insurance Association, stated that a change in the statute of limitations is necessary to make a more liberal time period in which a person can file a claim. A person exposed to asbestos can have a break out 20 or 30 years after the initial contact, due to the incubation period, added Mr. Drake.

Gary Blewett, representing the Department of Labor and Industry, stated that the department does not have a position on House Bill 251. Mr. Blewett distributed to committee members Exhibit 5, which is attached hereto. Mr. Blewett suggested to the committee that the following not be deleted: page 4, lines 6 through 17, page 5, line 1 and page 5 lines 15 through 17.

Proponent Karl Englund, representing the Montana Trial Lawyers Association, offered his support of House Bill 251. Mr. Englund feels that subsection two under section two should not be stricken.

Opponent George Wood, Executive Secretary of the Montana Self Insurers Association, stated that this is a complicated issue and that an individual can have a claim years after the initial exposure. The Occupational Safety Act should be rewritten with the medical profession considered. House Bill 251 has one specific purpose which is to shift the cost from insurance companies to Montana Employers and these employers do not have the ability to pay, added Mr. Wood.

In closing, Representative Ramirez stated that changing from the proposed change is a much fairer concept and it is not passing the responsibility from the insurance companies to employers. It shifts the responsibility from an employer to the whole society and this is a legitimate shift. The amendment proposed by Karl Englund is presently in the Workers' Compensation Law and is unnecessary, added Representative Ramirez.

Representative Nisbet asked Representative Ramirez what page 5, line 23 repeals. Representative Ramirez explained that it is the death benefits.

Representative Pavlovich asked Gary Blewett how many claimants are currently receiving benefits under the silicosis act. Mr. Blewett stated that there are 195 silicotics and 157 widows of silicotics.

Representative Driscoll asked Representative Ramirez if an individual has an occupational disease, but does not discover

it until ten years after the initial contact, can they sue the employer. Representative Ramirez explained that they cannot and they will not be eligible for benefits.

Representative Brandewie asked Representative Ramirez if an employer can ask certain questions relating to health conditions prior to hiring. Representative Ramirez explained that an employer can request a physical. Representative Brandewie does not feel it is fair to hold the last employer responsible when the disease could have been contracted during previous employment.

Representative Bachini asked Gary Blewett if a present and past employer could have both contributed to the disease would the present employer be liable. Mr. Blewett answered that that was correct.

Representative Glaser suggested to Mr. Wood that it may be in the best interest of an employer to discriminate and not hire any individual that could have been exposed. Mr. Wood did agree.

Representative Driscoll questioned Representative Ramirez, Karl Englund and Glen Drake as to whether an employee could file a suit against an employer if he had not filed an occupational disease claim within three years from the date he last worked. Representative Ramirez and Mr. Drake agreed that the employer could not be sued and Mr. Englund explained that depending on the fact of circumstances, a suit may be possible.

Representative Wallin asked Gary Blewett if the premium costs and the cost to the department would increase. Mr. Blewett stated there would be no increase.

There being no further discussion by proponents or opponents, all were excused by the chairman and the hearing on House Bill 251 was closed.

HOUSE BILL NO. 214: Hearing commenced on House Bill 214. Representative Ron Miller, District #25, sponsor of the bill, stated that this bill is at the request of the Board of Speech Pathologists and Audiologists. This bill is intended to provide for registration of speech pathology aides and audiology aides. The bill also changes the date for payment of license renewal fees from July 31 to October 31. Under present law renewal is done every two years in July. The bill requires the Department of Commerce to

all were excused by the chairman and hearing on House Bill 214 was closed.

Mr. Dave Wanzenried, Commissioner of the Department of Labor and Industry, distributed to committee members Exhibits 6, 7, 8 and 9 which are information pertaining to House Bill 284 which will be heard by the Business and Labor Committee on January 29, 1985.

ACTION ON HOUSE BILL NO. 261: Representative Simon made a motion that House Bill 261 DO PASS. Representative Driscoll made a substitute motion that House Bill 261 BE TABLED. Representative Thomas feels that House Bill 261 presents a good way to help face the problem. Representative Simon added that the Montana Tavern Association admits there is a problem and if the state can't allow for a 1% movement per year, something is wrong. Representative Brandewie agrees with House Bill 261 as long as the licenses are distributed evenly. Representative Hansen had spoken with tavern owners in Missoula and their feeling is that there is currently an over abundance of licenses in the Missoula area. Representative Simon asked the committee to defer action on House Bill 261 until House Bill 527 is heard. Representative Pavlovich explained that presently in Silver Bow County, there is a surplus of liquor licenses and he would not like to see more being transferred into the area each year. Question being called, a roll call vote resulted in 18 members voting yes and two voting no, on Representative Driscoll's motion that House Bill 261 BE TABLED.

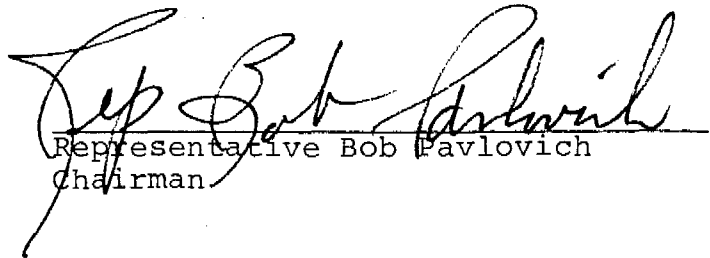
ACTION ON HOUSE BILL NO. 214: Representative Thomas made a motion that House Bill 214 DO PASS. Second was received and House Bill 214 DO PASS with all but Representative's Nisbet, Glaser and Kitselman voting yes.

ACTION ON HOUSE BILL NO. 251: Representative Thomas made a motion that House Bill 251 DO PASS. Representative Thomas then moved the amendments on page 4, lines 6 through 17 and on Page 5, line 1. Said amendment would not delete the language as proposed in House Bill 251. Said amendment did PASS unanimously.

Representative Thomas then moved the following amendment: on page 5, lines 15 through 17 remain. Representative Kitselman moved that additional language be added, which would state that, "the disease be contracted while employed in Montana." Representative Driscoll explained that a legal battle may result due to this language. Representative Driscoll then added that the payment for silicosis is \$200 and it is too little a sum to be denied a person who may have contacted

the disease in another state. Representative Thomas' proposed amendment on page 5, lines 15 through 17 be inserted PASSED unanimously. Representative Kitselman then moved that on page 5, line 11, following "101" insert "which was contracted in Montana". Representative Brown asked if this amendment would apply only to silicosis, which was correct. Representative Ellerd asked the age of the youngest recipient who is presently collecting for silicosis. Representative Pavlovich explained that the person is in their early 60's and that there have not been any recent exposures. Representative Wallin suggested that wording be inserted that would exclude a person from receiving in Montana if they were receiving from any other state. Representative Kitselman then withdrew his amendment. Representative Kadas moved that an amendment on page 2, lines 24 and 25 and on page 3, line 1 through 4, not be deleted. Representative Driscoll stated that Representative Ramirez thought this language may be redundant and he would rather include this language to be safe. Question being called for, a roll call vote resulted in 11 members voting yes and 9 voting no on Representative Kadas' amendment. The amendment PASSED. Representative Thomas' motion that House Bill 251 DO PASS AS AMENDED, received a unanimous vote.

ADJOURN: There being no further business before the committee, the meeting was adjourned at 10:45 a. m.


Representative Bob Pavlovich
Chairman

DAILY ROLL CALL
BUSINESS AND LABOR COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date January 25, 1985

NAME	PRESENT	ABSENT	EXCUSED
Bob Pavlovich	✓		
Les Kitselman	✓		
Bob Bachini	✓		
Ray Brandewie	✓		
Jan Brown	✓		
Jerry Driscoll	✓		
Robert Ellerd	✓		
William Glaser	✓		
Stella Jean Hansen	✓		
Marjorie Hart	✓		
Ramona Howe	✓		
Tom Jones	✓		
Mike Kadas	✓		
Vernon Keller	✓		
Lloyd McCormich	✓		
Jerry Nisbet	✓		
James Schultz	✓		
Bruce Simon	✓		
Fred Thomas	✓		
Norm Wallin	✓		

STANDING COMMITTEE REPORT

January 25

19 85

page 1 of 2

MR. SPEAKER

We, your committee on BUSINESS AND LABOR

having had under consideration HOUSE Bill No. 251

FIRST reading copy (WHITE)
color

**PROVIDE 2 YEAR DISCOVERY STAT. OF LIMITATIONS FOR INDUSTRIAL
DISEASE CLAIMS**

Respectfully report as follows: That HOUSE Bill No. 251

BE AMENDED AS FOLLOWS:

1. Page 2, line 12
Following: "~~++~~"
Insert: "(1)"
2. Page 3, line 5
Following: line 4
Insert: "(2) The division may, upon a reasonable showing by the claimant or a decedent's beneficiaries that the claimant or the beneficiaries could not have known that the claimant's condition or the employee's death was related to an occupational disease, waive the claim time requirement up to an additional 2 years."
3. Page 3, line 14
Following: "compensation"
Insert: "(1)"

XDEPASS

4. Page 4, line 18
Following: line 17
Insert: "(2) When any employee in employment on or after January 1, 1959, because he has an occupational disease incurred in and caused by such employment which is not yet disabling, is discharged or transferred from the employment in which he is engaged or when he ceases his employment and it is in fact, as determined by the medical panel, inadvisable for him on account of a nondisabling occupational disease to continue in employment and he suffers wage loss by reason of the discharge, transfer, or cessation, the division may allow compensation on account thereof as it considers just, not exceeding \$10,000."
5. Page 5, line 1
Following: "39-72-405(3)?"
Insert: "including a claim based on 39-72-405(2),"
6. Page 5, line 18
Following: line 17
Insert: "(2) has resided in and been an inhabitant of the state of Montana for 10 years or more immediately preceding the date of the application;"

Renumber: subsequent subsection

AND AS AMENDED,
DO PASS

ROLL CALL VOTE

HOUSE COMMITTEE BUSINESS AND LABOR

DATE 1-25-85 BILL NO. 251 TIME

NAME	AYE	NAY
Bob Pavlovich	✓	
Les Kitzelman		
Bob Bachini		✓
Ray Brandewie	✓	
Jan Brown		✓
Jerry Driscoll	✓	
Robert Ellerd		✓
William Glaser	✓	
Stella Jean Hansen	✓	
Marjorie Hart	✓	
Ramona Howe	✓	
Tom Jones	✓	
Mike Kadas	✓	
Vernon Keller		✓
Lloyd McCormick	✓	
Jerry Nisbet	✓	
James Schultz		✓
Bruce Simon		✓
Fred Thomas		✓
Norm Wallin		✓

Secretary Debbie Aquil

Chairman Bob Pavlovich

Motion: 11-9 Amendment to HB 251 pg. 2, lines 24-25
& pg. 3, lines 1-4 Reinstated

II-10

OCCUPATIONAL DISEASE ACT

39-72-404. False representation by employee concerning previous occupational disease. No compensation shall be payable for an occupational disease if the employee, at the time of entering the employment of the employer by whom the compensation would otherwise be payable, knowingly represented himself in writing as not having previously been disabled, laid off, or compensated in damages or otherwise because of such disease when the contrary is true.

History: En. Sec. 43, Ch. 155, L. 1959; R.C.M. 1947, 92-1342.

Cross-References

"Employer" defined, 39-71-117, 39-72-102.

"Employee" defined, 39-71-118, 39-72-102.

"Occupational disease" defined, 39-72-102.

39-72-405. General limitations on payment of compensation to disabled employee — exceptions. (1) Except as provided for in this section, compensation may not be paid when the last day of the injurious exposure of the employee to the hazard of the occupational disease has occurred prior to July 1, 1959.

(2) Except as provided for in subsection (3) of this section, no compensation may be paid for silicosis unless during the 8 years immediately preceding the disablement the injured employee has been exposed to harmful quantities of silicon dioxide dust for a total period of not less than 1,000 workshifts in employment in this state and unless total disability results within 3 years from the last day upon which the employee actually worked for the employer against whom compensation is claimed.

(3) A silicotic employee who is discharged by his employer to escape liability for silicosis benefits under this chapter is eligible to receive compensation under this chapter when totally disabled if he has 700 actual workshifts since January 1, 1954, for that employer. When any employee in employment on or after January 1, 1959, because he has an occupational disease incurred in and caused by such employment which is not yet disabling, is discharged or transferred from the employment in which he is engaged or when he ceases his employment and it is in fact, as determined by the medical panel, inadvisable for him on account of a nondisabling occupational disease to continue in employment and he suffers wage loss by reason of the discharge, transfer, or cessation, the division may allow compensation on account thereof as it considers just, not exceeding \$10,000.

History: En. Sec. 11, Ch. 155, L. 1959; amd. Sec. 1, Ch. 92, L. 1965; amd. Sec. 2, Ch. 208, L. 1977; R.C.M. 1947, 92-1311(1)(a) thru (d); amd. Sec. 4, Ch. 104, L. 1979.

Cross-References

"Division" defined, 39-71-116, 39-72-102.

"Disablement" defined, 39-72-102.

"Employer" defined, 39-71-117, 39-72-102.

"Occupational disease" defined, 39-72-102.

"Employee" defined, 39-71-118, 39-72-102.

"Silicosis" defined, 39-72-102.

Exclusive remedy. Claimant who was covered by the Occupational Disease Act, but who did not meet the requirements set forth in Sec. 39-72-405, including the number of workshifts required, was precluded from bringing lawsuit to recover for his alleged ailments. *Anaconda Co. v. District Court*, 161 Mont. 318, 506 P.2d 81 (1973).

Nondisabling occupational disease. Claimant having an occupational disease caused by his employment and not yet disabling but did require he cease such employment as determined by the medical panel, a wage loss is compensable under 39-72-405 (3), not exceeding \$10,000. *Stammen v. Hank's Body Shop, Inc.*, W.C. Div. No. 2-81-00869 O.D. (1983).

Collateral reference: 1B *Larson*, §§ 41.82, 41.87.

39-72-406. General limitations on payment of death benefits — exceptions. Compensation shall be paid to the beneficiaries of every employee covered by this chapter in cases where death results from an occupational disease arising out of his employment, subject to the following conditions:

See also related amendment on page 5 of the bill (39-72-211(2)).

VISITOR'S REGISTER

HOUSE BUSINESS AND LABOR COMMITTEE

BILL House Bill 251

DATE January 25, 1985

SPONSOR Representative Ramirez

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

OPPONENTS OF HOUSE BILL 213: None were present.

QUESTIONS FROM THE COMMITTEE: Senator Blaylock asked if a person who is direct-selling can come under workers' compensation.

Representative Jan Brown said they can if they choose to.

Senator Towe asked if a determination should subsequently be made in the case that there is an injury and the injured party felt they were an employee as to whether they could sue the employer on the basis that they should be covered. He asked if the employers will have to have coverage to cover the situation.

Gary Blewett, Department of Labor, said if employers had employees in the State of Montana, they would have insurance coverage. If the employer had no insurance, they would be sued under the Uninsured Employers Act. There are sever penalties.

Senator Towe said the Uninsured Employers Act is not much help.

Gary Blewett said as far as the Uninsured Employers Act is concerned, there are penalties against the employer.

Representative Brown closed on House Bill 213, asking for the committee's concurrence.

The hearing was closed on House Bill 213.

Senator Fuller will carry the bill.

CONSIDERATION OF HOUSE BILL 251: Vice Chairman Manning called on Representative Jack Ramirez, sponsor of House Bill 251. House Bill 251 is an act revising laws relating to claims arising from occupational disease. This bill is supported by the insurance industry. The insurance industries are trying to avoid federal intervention.

PROPONENTS OF HOUSE BILL 251: Karl Englund, representing Montana Trial Lawyers Association, said there is a nationwide campaign to even up the rules on occupational disease. Their concern is that too restrictive state rules could lead to a federal program.

OPPONENTS OF HOUSE BILL 251: None were present.

QUESTIONS FROM THE COMMITTEE: Senator Towe asked Representative Ramirez what he is doing with the silicosis matter. He called attention to the bottom of page 1 and the middle of page 4.

Representative Ramirez said there are changes because there are so many requirements; on page 1, lines 21-25.

Senator Towe asked if that is not a restriction.

Representative Ramirez said that's right, the bill treats silicosis like any other disease.

Senator Towe called attention to page 4, line 8-12 and asked who Representative Ramirez is talking about there.

Representative Ramirez said, "You are restricting them." An employer could discharge someone to escape liability for silicosis benefits. The only way he would be liable still is if there were 700 actual workshifts. The bill does away with all these restrictions because there have not been any new silicosis cases.

Karl Englund pointed out that the bill says "a silicosis employee who is discharged by his employer to escape liability for silicosis benefits is eligible to receive compensation under this chapter when totally disabled if he has 700 actual workshifts, he has to be discharged, disabled and have 700 workshifts under this provision."

Senator Lynch resume the chair.

Senator Towe asked what the two repealing sections on page 6 are.

Representative Ramirez said they deal with silicosis.

Senator Aklestad asked how many total years employees have now to turn in a claim.

Representative Ramirez replied they have 3 years from the time they last worked for the employer where they were exposed to the disease.

Senator Aklestad asked with this bill, what the time will be.

Representative Ramirez said it is two years after they know or should know that their disability is a result of occupational disease.

Senator Aklestad asked how many doctors are needed for this.

Representative Ramirez replied that it has to be proven by the evidence.

Senator Keating said we are dealing with more substances than just silicosis. He referred to the evidence of arsenic

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in the Anaconda area and asked Senator Haffey about that situation.

Senator Haffey said there are all kinds of tests going on, they are testing a lot of children.

Representative Menahan said that right now they are testing, but he doesn't think arsenic is affecting the population.

Senator Keating asked if there could be a rash of claims on occupational diseases.

Representative Ramirez replied that for silicosis there is a 10-year limitation. You have to have been a resident for at least 10 years.

Senator Keating asked if there is a residency requirement for silicosis.

Representative Ramirez said yes.

Senator Keating asked if that is the only residency requirement.

Representative Ramirez said yes.

Chairman Lynch asked how many new silicosis recipients we have had in the past year..

Gary Blewett replied that, under the Occupational Disease Act, he doesn't think we have had any, but under the Silicosis General Program we have had five.

Senator Lynch said Representative Ramirez had said there has not been any recipients for several years, but each year there are recurring new recipients of the silicosis benefits from the general fund.

Gary Blewett said the bill would have a positive act on the general fund, but what it would do is shift the cases that now are only eligible under the general fund program to the Occupational Disease Act.

Senator Lynch asked if there is a widow clause in the silicosis program.

Gary Blewett said there is a 100-per-month widow clause.

Chairman Lynch said he means now that we are shifting the funding to the Occupational Disease Act will there still be a widow clause for those people.

Gary Blewett said yes, that it is a beneficiary clause, higher than \$100 per month.

Senator Towe asked if this is a presumption that 407 of the 12,000 workshifts apply to the general fund program.

Gary Blewett replied that the only provision in the general fund is to identify that it did occur during occupation and that the individual lived in Montana for 10 years.

Senator Aklestad said, "You said that there was a concern to the insurance people and I was just wondering where they are at."

Senator Thayer asked if the insurance people were in agreement with this bill.

Representative Rameriz said yes, they are.

Senator Thayer asked if they have excluded this some way, or can employers still get coverage to protect themselves.

Karl Englund said no, they are not excluding things, their concern is about federal legislation in this area.

Senator Keating asked in which case that would impact the general fund.

Representative Ramirez said he had no idea if had any impact on the general fund. All he wants is for it to be fair so that federal intervention would not occur.

Senator Aklestad said the industry will sell more insurance.

Representative Ramirez said no, he was not talking about the insurance industry, he was talking about the employers.

Senator Keating will carry this bill.

Representative Ramirez closed on House Bill 251.

The hearing was closed on House Bill 251.

CONSIDERATION OF HOUSE BILL 306: Chairman Lynch called on Representative Menahan, sponsor of House Bill 306. House Bill 306 is a request by the Board of Athletics. It is to eliminate any members of the Board of Athletics being amateur boxers or involved in amateur or professional boxing.

PROPOSERS OF HOUSE BILL 306: Mary Lou Garrett, representing the Department of Commerce, rose in support of this bill and said she would answer any questions.

OPPONENTS OF HOUSE BILL 306: None were present.

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QUESTIONS FROM THE COMMITTEE: Senator Keating asked why amateur boxing matches. Does this mean a board member can be an amateur boxer.

Representative Menahan said yes.

Senator Keating asked if the Department of Commerce has rule making authority.

Mary Lou Garrett said yes.

Representative Menahan closed on House Bill 306.

Chairman Lynch will carry the bill.

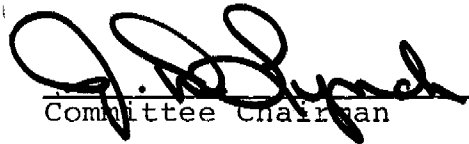
The hearing was closed on House Bill 306.

EXECUTIVE ACTION ON HOUSE BILL 306: Senator Haffey moved concurrence on House Bill 306. On a voice vote, the Committee voted unanimously that House Bill 306 BE CONCURRED IN.

EXECUTIVE ACTION ON HOUSE BILL 251: Senator Keating moved concurrence on House Bill 251. On a voice vote, the Committee voted unanimously, except for Senator Aklestad who voted no, that House Bill 251 BE CONCURRED IN.

EXECUTIVE ACTION ON HOUSE BILL 213: Senator Thayer moved concurrence on House Bill 213. On a voice vote, the Committee voted unanimously that House Bill 213 BE CONCURRED IN.

ADJOURNMENT: The committee, having no further business, adjourned at 2:01.


Committee Chairman

STANDING COMMITTEE REPORT

March 5 19.. 85..

MR. PRESIDENT

We, your committee on.....**LABOR AND EMPLOYMENT RELATIONS**.....

having had under consideration.....**HOUSE BILL**..... No. **251**.....

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**PROVIDE 2 YEAR DISCOVERY STAT. OF LIMITATIONS FOR INDUSTRIAL
DISEASE CLAIMS**

Respectfully report as follows: That.....**HOUSE BILL**..... No. **251**.....

BE CONCURRED IN

~~XXXXXX~~

~~XXXXXXXXXX~~
DO NOT PASS

.....
SENATOR J.D. LYNCH

.....
Chairman.

Labor and Employment

COMMITTEE

48th LEGISLATIVE SESSION -- 1985

Date 3/5/85

NAME	PRESENT	ABSENT	EXCUSED
Senator Aklestad	X		
Senator Blaylock	X		
Senator Haffey	X		
Senator Keating	X		
Senator Manning	X		
Senator Thayer	X		
Sentor Towe	X		
Chairman Lynch	X		

Each day attach to minutes.

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Health Complaint

VISITORS' REGISTER.

[illegible]

(Please leave prepared statement with Secretary)